

# MAIGALOMANIA!

## THE MULTILATERAL AGREEMENT ON INVESTMENT

*If ratified, the Multilateral Agreement on Investment will place yet more power and wealth in the hands of transnational corporations, with questionable benefits to people worldwide.*

### Part 2

**A Briefing by  
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**T**hird World countries revolted against the MIA [the Multilateral Investment Agreement within the World Trade Organization] from the beginning. In January 1996, for example, Malaysian Prime Minister Dr Mahathir Mohamad commented that his country was "aware of such moves and...will take steps to ensure that such an unfair trade treaty will not be pushed through".<sup>46</sup>

Soon afterwards, eight Third World countries, including India and Indonesia, issued a statement declaring their "objection to the bringing up of the trade and investment issue in the World Trade Organization".<sup>47</sup> Couching their displeasure in diplomatic terms, these countries expressed their concern that an MIA would impact on "the ability of national governments to regulate FDI flows so as to support national development objectives and priorities". "Equally unclear", the eight governments stated, "is the nature of the potential benefits and costs of FDI and its relationship to the globalisation process and the accompanying phenomenon of marginalisation".<sup>48</sup> Instead, they demanded that the investment issue be discussed within the framework of the UN Conference on Trade and Development (UNCTAD) which lacks binding juridical powers and in which developing countries are at a less glaring disadvantage as in the WTO. These resistant Third World countries had learned a lesson from the Uruguay Round of the GATT: that the initiation of negotiations generates enormous pressure for the completion of far-reaching treaties.

Despite these clear signals from Third World governments, WTO Director-General Ruggiero nevertheless placed investment on the agenda for the WTO's December 1996 Ministerial Conference in Singapore. The EU and other proponents of the MIA had by that time adapted their proposal into a "study process" on the relations between trade and investment.<sup>49</sup>

During the course of the Singapore conference, those countries who resisted bringing investment onto the WTO agenda were one after another prodded to change their position. Some countries lobbied with some success to limit the scope of the working group. The last country to give in was India, which ultimately joined the last-ditch efforts to prevent the proposed working group from preparing the elements of an MIA negotiation process.

In an utterly undemocratic procedure, a final draft declaration was negotiated by an informal group of 30 countries. It was presented to the conference plenary at the very last moment, accompanied by a plea from the chairman, Singapore's Yeo Cheow Tong, to countries to refrain from reopening discussions.<sup>50</sup> And so the WTO working group on trade and investment was born.

Following the Singapore conference, EU Commissioner Brittan envisioned the door to a multilateral "framework of binding rules" on investment wide open. He declared: "...on investment...we have at least put WTO on the map. Investment indeed seems to me to be the top priority for WTO in the years ahead."<sup>51</sup>

Third World negotiators, on the other hand, emphasised that they had managed to stop negotiations on an MIA from being launched. India's Commerce Secretary Tejendra Kanna said: "We made it clear that no mandate can be given for a study of an MIA. This is not permissible even with the two-year period. If it ever comes to that stage, even then we will block it."<sup>52</sup>

### INVESTMENT WORKING GROUP NEGOTIATIONS

The tension between OECD countries and MIA opponents was tangible at the three meetings of the working group in 1997, at which the OECD, UNCTAD, the World Bank, the IMF and other international institutions were observers. Whereas the EU has continued to urge for the commencement of negotiations, countries like Malaysia, India,

Indonesia and Pakistan remain outspoken against even the smallest steps towards a global investment treaty.<sup>53</sup>

The working group has been discussing trade, investment, development and economic growth on an abstract level, but in 1998 will also take on "multilateral agreements and initiatives".<sup>54</sup> Its report to the WTO Ministerial Conference in May 1998 [as we go to press] is not likely to contain any controversial recommendations, and it is not expected that any decisions on investment will be taken at this meeting.

Over the [northern] summer and fall, however, debates in the working group will heat up in anticipation of the December 1998 deadline for the final report to the WTO General Council. Proponents of a WTO treaty on investment will attempt to rally support for the preparation of negotiations; their success largely hinges upon the fate of the MAI negotiations. Observers expect that the EU and others aim to revitalise MIA so that negotiations could begin by 1999 or the year 2000.

According to some sources, the most likely strategy is the initiation of a new general round of negotiations to include worldwide liberalisation of agriculture, investment and several other issues at the beginning of the new millennium.

## WORLD TRADE ORGANIZATION

The World Trade Organization (WTO) came into being on 1 January 1995, following the signing of the GATT global free trade agreement in 1994. The WTO's mandate is to remove obstacles to trade, and governments can ask its dispute settlement body to investigate whether another country's legislation might in fact be a trade barrier. WTO decisions are binding and can be enforced through the implementation of trade sanctions against the disobedient government by all WTO member countries.

The most recent WTO judgement that a consumer protection law acted as a trade barrier concerns the European Union's ban on growth hormones in beef, but many more cases are on the way. Just as the US raises cases on behalf of its corporations, the EU questions US food safety and environmental legislation on behalf of Europe-based TNCs.

The US, the EU and Japan are continuously seeking the expansion of the WTO's mandate, as their industries crave access to the last remaining unprotected sectors of Third World economies. Since 1995, steps have been taken to liberalise telecommunications and financial services.

Despite fierce Third World opposition, a WTO investment liberalisation treaty is still a high priority for OECD countries and, in particular, for the European Union.

## UNCTAD

The United Nations Conference on Trade And Development (UNCTAD) is increasingly used by OECD countries and business groupings as a forum for moving Third World countries in the direction of a friendlier position on investment deregulation.

The UNCTAD, at its May 1996 conference in Witrand, South Africa, received a mandate to study the development implications of existing investment arrangements, like bilateral investment treaties (BITs), and to discuss the necessity of a multilateral framework for investment.

At the conclusion of their June 1996 meeting in Lyon, France, G7 leaders described the results of the Witrand conference as "a major milestone in the renewal of UNCTAD" and applauded the refocusing of UNCTAD's work on "a small number of priorities to promote development through trade and investment, with the aim of facilitating the integration of developing countries in the international trade system".

Although consensus-building on investment rules within the UNCTAD is informal, developing countries didn't join without nudges from their industrialised neighbours. As EU Commissioner Sir Leon Brittan put it in a speech to a business audience in Cologne: "Informal discussions have already begun in Geneva, largely thanks to European and Canadian pressure. We have been trying not to bludgeon developing countries into submission, but to share with them the fruits of our latest analysis, in order to show that investment liberalisation is a winning strategy for all players."<sup>55</sup>

And not only G7 governments are trying to lure developing countries into the UNCTAD massage parlour: major industry lobby groups like the European Round Table of Industrialists (ERT) and the International Chamber of Commerce (ICC) have also discovered the usefulness of this institution.

In December 1997, the ERT and the UNCTAD Secretariat co-organised a high-level meeting of 25 Geneva-based ambassadors from developing countries and some 16 CEOs of ERT companies to discuss a June 1997 ERT working paper on investment. This meeting was chaired by the UNCTAD Secretary-General, Rubens Ricupero, and ICC and ERT Chairman Helmut Maucher of Nestlé. Maria Livanos Cattai, Secretary-General of the ICC, was also present.

And at UNCTAD's 1996 World Investment Forum Conference, the ICC spoke on behalf of world business, outlining what Third World countries should do to attract foreign

direct investment. Asking investors to fulfil special obligations, for example, was strongly discouraged.<sup>56</sup>

## INTERNATIONAL MONETARY FUND

The International Monetary Fund (IMF), traditionally responsible for helping countries meet their balance-of-payments requirements and setting currency standards, has been a key instrument in prying open markets for foreign investors and bailing them out in the case of financial crisis. The IMF's crowbar is a set of investment liberalisation measures which rob countries of their economic sovereignty.

As James Tobin, the Nobel laureate economist who proposed a tax on all international currency transactions, put it: "It is hard to escape the conclusion that the countries' currency distress is serving as the opportunity for an unrelated agenda—including the obtaining of trade concessions for US corporations and expansion of investment possibilities."<sup>57</sup>

And indeed, the recent IMF "recovery packages" for the shattered economies of South Korea, Thailand and Indonesia included a number of provisions that might have been taken straight from the text of the MAI. These included requirements that the indebted governments guarantee the following: the right for all foreign investors to establish investments in every sector of the economy; the weakening of labour and environmental standards to attract

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investment; the removal of safeguards in stock markets that limit flash sell-offs and capital flight; and prevention against the adoption of regulations which would restrict or control foreign investment in their countries.

Today, with the Asian economies more exposed, TNCs are buying out local companies at bargain prices and, at the same time, gaining new market territory for themselves.

### FUNDAMENTAL FLAWS OF THE MAI

The next few months will be decisive for the future of the MAI, the Multilateral Agreement on Investment. OECD negotiators appear determined not to extend the deadline for the negotiations a second time. They are racing against the clock to resolve conflicts between various countries, and are busily decorating the agreement with non-binding wording on social and environmental standards in an attempt to neutralise the critique and improve the chances of getting the MAI through national parliaments. Any further delay would leave MAI's future extremely uncertain. Experience has shown that additional time serves only to multiply problems for the negotiators, as more and more negative impacts of the MAI come to light.

Most recently, the European Parliament's queries about how the MAI would affect future possibilities for improving social and environmental policies within the EU have brought problems with the MAI to the surface.

The multiplying number of pages of reservations demanded by national delegations have placed the OECD's rosy picture of a 'win-win' treaty in a more realistic light. That the negotiating governments are at last becoming wary of the impacts that the MAI will have on their societies is a clear indication of the fundamentally flawed character of the treaty.

MAI negotiators are likely to announce a political agreement on the MAI at the OECD's Ministerial Conference in May. Over the next months they will focus on adding the finishing touches so that the treaty can be officially signed in November 1998. This is obviously a highly undemocratic procedure and is symptomatic of the entire process to date.

Although the rigid economic model that MAI signatory countries will be forced into may enjoy strong governmental support today, it will likely attract growing critique over coming years as its social, environmental and political impacts become increasingly visible. Joining the MAI involves a 20-year lock-in to a deregulated system in which countries are completely dependent upon the global economy, foreign investments and foreign investors—in other words, upon TNCs. Countries facing economic problems or other challenges will be barred from seeking new solutions. This is not only undemocratic but also extremely dangerous.

Citizens' campaigns against the MAI are increasing in strength day by day and in country after country, and the media are at last taking notice of the treaty. The NGO plot to kill the MAI has been termed "the Dracula strategy": simply, bringing public attention to a treaty that cannot stand up against the light.

Thus far, the response from OECD governments to the increasing pressure has been the addition of non-binding language to the treaty's preamble and elsewhere, but most NGOs recognise these as pseudo-solutions that do not change the fundamentally flawed character of the MAI.

### DANGERS OF TNC DEPENDENCY

The OECD's haste in pushing the MAI through can also be attributed to the fear that the deregulation wave may be losing momentum. MAI negotiations started in 1995 at a time when OECD countries were intoxicated by the signing of the GATT and the birth of the WTO. Since then, although many more steps have been taken on the path towards a deregulated world market without borders for goods or capital flows, there are also increasing signs of a backlash arising from Southern governments and from people all over the world.

The financial crisis in Asia was a painful lesson for the many Third World countries which had been forced to scrap the very regulations that could have prevented such a crash. Some governments, including Thailand, have now started talking about the need to reintroduce regulation.

Critique of the deregulation model has also recently come from surprising corners: financial speculators George Soros and the late Sir James Goldsmith, for example, have both repeatedly warned against the social and environmental dangers of unbridled economic globalisation.

The next step includes voicing clearer alternatives, and advocating policies which reduce the current dangerous dependency upon transnational investment. Economic globalisation and deregulation have created a vicious circle in which investment dependency forces workers, communities and governments into increasingly harsh competition on wages, taxes, environmental protection and anything else that might influence investment conditions.

That international competitiveness is becoming the single most important factor determining the health of a society is a scenario for disaster and will unavoidably lead to a downwards spiral in social and environmental standards, and delay or freeze desperately needed progress in these areas.

It is in reaction to this economic dependency upon TNCs that OECD governments have developed the MAI in close cooperation with business lobby groups, and why they are now desperately trying to push it through before the public is clued in to what is happening.

Finally, TNC dependency is what is stimulating an increasing number of Third World countries to queue up to sign the MAI so that they can receive a stamp of approval for having a first-class investment climate.

There are no lack of policy options for reducing TNC dependency and putting economic diversity and prosperity of local communities first. These options include: community reinvestment rules; limits on company size to avoid unfair competition; subsidies for local production for local use; efficient taxation of TNC profits to ensure that the local economy benefits from their presence; regulation of capital flows; and numerous other currently unfashionable policy options. Of course, these are the type of measures which would be banned if the MAI survives.

MAI entails the institutionalisation of neoliberalism as the only option—the creation of a global economic constitution that is the equivalent of economic monoculture.

The struggle against the MAI has demonstrated the enormous necessity and potential for grassroots globalisation on these complex, far-reaching issues. Information and strategies are being shared among an increasingly strong network of citizens, NGOs,

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workers, development organisations, women's movements and church groups. Although effective resistance to the MAI has arisen late for a variety of reasons, there is no doubt that NGOs are now catching up. With an increasingly clear, common analysis of the dangers of corporate-led globalisation, civil society is getting prepared to defend our local economies, our democratic systems and the common good.

### THE MAIN CORPORATE PLAYERS:

The preceding parts have given ample examples of how corporate lobby groups have been involved in the shaping of the MAI. The following is a more detailed overview of the main corporate groupings and the manifold strategies they have used in their crusade for investment deregulation in various international forums.

### INTERNATIONAL CHAMBER OF COMMERCE

One of the most heavyweight corporate players behind the MAI is without doubt the International Chamber of Commerce (ICC). The ICC, which promotes itself as "the world business organization" with members in over 130 countries, is not primarily an umbrella for chambers of commerce from around the world, as the name might suggest.<sup>58</sup> Its membership includes some of the world's wealthiest transnational corporations: Asea Brown Boveri, Bayer, British Petroleum, Dow Chemical, General Motors, Hyundai, Nestlé, Novartis, Shell, Toshiba, Zeneca and so forth. Quite a few national business associations are also part of the ICC.

The ICC, which clearly has ambitions to become a major player in global politics, shares its chairman, Nestlé president Helmut Maucher, with the influential European Round Table of Industrialists. The ICC's Secretary-General is Maria Livanos Cattai, who, over a period of nearly two decades, developed the World Economic Forum and its annual meeting in Davos, Switzerland, into a hugely influential global summit of corporate leaders and top politicians.

ICC involvement in the MAI negotiations has partly been through the Business and Industry Advisory Council (BIAC), the official business delegation to the OECD negotiations.

The Chamber itself has left a number of fingerprints on the draft treaty—for instance, regarding arbitration. In the current draft, the ICC's Court of Arbitration is included as one of the main mechanisms for dispute settlement. Vincent J. O'Brien of the ICC said: "We definitely helped with the parts regarding arbitration. The ICC clearly has expertise in that area, and so it was natural that we had a hand in there."<sup>59</sup> One of the most controversial aspects of the MAI—the investor-state dispute mechanism which will allow corporations to sue governments in an international court—has been developed with the assistance of ICC 'experts'. The role of the ICC in this mechanism will be to oversee disputes and facilitate the settlement process.

The MAI allows its signatories to declare certain laws exempt from the treaty for national security reasons. However, it is up to the MAI dispute settlement panel—overseen by the ICC—to determine whether such a claim is valid. No one is entirely sure how the MAI would affect national law, as interpretation of the treaty will be left to an independent panel appointed by defendants and corporations bringing the dispute. Under the proposed

MAI, state courts will have no jurisdiction in this area of law.

The ICC has also made use of its access and consultative status at major international summits to push for the MAI. During the Denver, USA, Summit of the G7 in 1997, the ICC met with the heads of state of the Group of Seven most industrialised countries and presented its viewpoints. Among other things, the ICC urged the leaders to work harder to ensure that the MAI negotiations are concluded quickly and that there be a complete rejection of environmental and labour standards.<sup>60</sup>

The OECD treaty on investment is a major goal for the ICC, but it is only the first step. In the spring of 1996, the ICC published its report, "Multilateral Rules for Investment",<sup>61</sup> in which it expressed its support for all of the major elements in the MAI: the broad definition of investment, national treatment, most-favoured nation treatment, investment protection, and binding investor-state arbitration. The report strongly supports the MAI negotiations, but ends by calling for the December 1996 WTO Ministerial Conference to "begin within the WTO to establish a comprehensive and truly global framework of rules and disciplines to govern cross-border direct investment".<sup>62</sup>

### EUROPEAN INDUSTRY AND THE MAI:

The two most influential European corporate lobby groups—the European Round Table of Industrialists (ERT) and the Union of Industrial and Employers Confederations of Europe (UNICE)—have followed different strategies in their striving for an international investment treaty.

#### EUROPEAN ROUND TABLE OF INDUSTRIALISTS

The European Round Table of Industrialists (ERT)<sup>63</sup> has long been deeply involved in the push for investment liberalisation, and has built a very comprehensive strategy to this end. While supporting the MAI, its main objective is an investment

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agreement at the WTO.<sup>64</sup>

As early as its 1993 report, "European Industry: A Partner for the Developing World", the ERT had stressed the need for "a GATT for investment" and "an institution that could take stock of improvements and be able to lock-in the process of liberalisation".<sup>65</sup> This point has been often repeated in the five reports on investment produced by the ERT North-South working group since 1993. ERT president Helmut Maucher, who also heads the ICC and is the CEO of Nestlé, chairs this working group.

The ERT has long played an active role in setting the EU policy agenda. In making the case for investment deregulation, Round Table members are in direct contact with European leaders and the European Commission as well as Third World governments.

The Round Table is jubilant about the positive effects achieved by two of its proposed tools to further economic globalisation: competition on rules (the race to provide companies with the most favourable investment conditions) and benchmarking (encouraging countries to compare their investment climate, including levels of deregulation). "Competition on rules and benchmarking have proven to be among the most effective drivers of the present process of opening the economy, deregulating and modernising the institutions for private business investments."<sup>66</sup>

These concepts, presented in a 1993 survey on investment,<sup>67</sup>

have been eagerly adopted by decision makers. "In the developing world it positively influenced attitudes and policies...it may have had an impact on the views and policies of the European Commission and European governments in external economic relations in many different ways."<sup>68</sup>

The ERT advocates an investment agreement within the WTO which would include the main elements of the MAI but would extend even further. According to the Round Table, a WTO treaty should ensure "continuous opening, also on the sub-federal level" through "rules and criteria for efficient public policy benchmarking and institutionalised peer review".<sup>69</sup> The WTO treaty should be flexible in order to "extend the coverage of the framework to additional relevant areas". The ERT's dream treaty would also include international competition policy "able to address structural impediments" to market access which foreign investors might come across, "defining the relevant market as more and as global".

The ERT seems overly optimistic about the time frame for the completion of the WTO agreement they desire, proposing a "structured debate on strategy and concepts for a global agreement on investment at the next WTO Ministerial expected in June 1998", and the "rapid conclusion of an agreement of the new kind".<sup>70</sup> No doubt they will receive full support from the European Commission, one of the main advocates of an MIA within the WTO.

Trade Commissioner Sir Leon Brittan, in reaction to the 1996 ERT survey on conditions for foreign investment, said: "I was particularly struck by the message that we needed to think about the best role of international negotiation, and to strike a balance between using the WTO to establish agreed best practice and using the WTO process to create more modern and dynamic instruments such as public policy benchmarking. My own hope is that WTO can do both."<sup>71</sup>

The ERT has strategically facilitated the softening of developing-country opposition to a WTO investment agreement. Many Third World countries have argued that discussion on investment should be held within the framework of UNCTAD, so at the end of 1997 the ERT co-organised with this organisation a meeting on investment. In attendance were 16 CEOs from ERT member companies (including ABB, British Petroleum, Krupp, Nestlé and Shell), ICC Secretary-General Maria Livanos Cattau, and 25 Geneva-based ambassadors. The meeting focused on "dialogue on matters concerning FDI and the development dimension of the issues and concepts relevant to a possible multilateral framework on investment", and used the June 1997 ERT investment report as a basis for discussions.<sup>72</sup>

## UNICE

UNICE, the European industrial employers organisation, tends to play a more reactive role than the ERT, generally responding to specific European Union policies as they emerge.

As the EU has not officially released its position on the MAI, UNICE has thus far taken a back seat in the negotiations. Nonetheless, the group strongly supports the MAI and is represented in the negotiations through its BIAC membership.<sup>73</sup> Additionally, UNICE is a strong proponent of a Multilateral Agreement on Investment (MIA) within the WTO.<sup>74</sup>

## NON-EUROPEAN CORPORATE LOBBIES AND THE MAI: US COUNCIL FOR INTERNATIONAL BUSINESS

When it comes to lobbying for the MAI, one of the most influential industry groups has proven to be the US Council for International Business (USCIB). Founded in 1945 "to promote an open system of world trade, investment and finance",<sup>75</sup> it counts over 300 corporations, industry lobby groups, law firms and banks among its membership—including the American Petroleum Institute, BP America, Coca-Cola, Chevron, DuPont, General Electric, General Motors, the Global Climate Coalition, Honeywell, Ford, McDonalds, Mobil, Monsanto, Nestlé USA, Philip Morris, Shell, Texaco and Unilever.

The USCIB is the US affiliate of the ICC and the International Organization of Employers (IOE), and, most significantly, chairs the expert group of the OECD's Business and Industry Advisory Committee (BIAC).

One hundred and fifty CEOs are busy pushing for investment liberalisation through the USCIB's Investment Committee, chaired by Glen Skovholt of the Honeywell corporation.<sup>76</sup> This policy committee has been very active on the MAI and has used its widespread corporate tentacles for various pressure tactics.

In addition to regular meetings with US negotiators immediately before and after each MAI negotiating session, USCIB also arranges direct access for its members to Ambassador Frans Engering, chairman of the OECD MAI negotiating group.

Domestic support for MAI has been created by the USCIB's collaboration with groups such as the National Governors Association and the Council of State Government.

The USCIB's interest in investment liberalisation initiatives is not restricted to the MAI in the OECD. Facilitated by its membership in bodies like the Business Advisory Council for APEC (the Asia-Pacific Economic Cooperation forum) and the Trans-Atlantic Business Dialogue

(TABD), where it co-chairs the working group on investment, the USCIB ensures that investment remains at the top of the agenda in all relevant forums, including the WTO and regional treaties.

Overseas pressure is also a tactic, and a USCIB delegation visited the Japanese business organisation Keidanren in Kyoto in order to enlist support for US business objectives in the MAI.<sup>77</sup>

There is no doubt that the USCIB has influenced the MAI from the beginning of the process. In 1991, four years before official negotiations began and long before MAI was out in the open, the USCIB was already providing input on pre-negotiation work. Later, in March 1995, the Council released a statement clarifying US business objectives, which, in its own words, "formed the basis of the formal BIAC submission to the OECD".<sup>78</sup>

The USCIB is clear about why it desires a MAI treaty. "The MAI should eliminate many of the restrictions which make it too costly for US firms to access foreign markets", according to Stephen Canner, the USCIB's Vice-President for Investment Policy.<sup>79</sup> Consequently, the USCIB agrees with other industry groups that the inclusion of labour and environmental provisions in the MAI would be an enormous blunder, and has encouraged the US administration to resist pressure from these interests.<sup>80</sup> Such provisions, it believes, "will deter key LDCs [less-developed countries], who are not members of the OECD, from adhering, [and] thereby undercut a major objective of the United States—to

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have a number of key non-OECD member countries join the MAI before beginning negotiations on investment in the WTO".<sup>81</sup>

Recently the USCIB has shifted its focus to ensure that any reference to labour and environment in the MAI remain non-binding, threatening to withdraw its support for the MAI if this line is crossed.<sup>82</sup> The trio of provisions (the so-called "three-anchor approach") that the group could swallow coincides with the environmental provisions presented by the US. These are a non-binding preambular statement on sustainable development, a non-binding provision on not lowering standards to attract foreign investment, and a non-binding attachment to the OECD's 1974 "Guidelines for Multinational Enterprises".

The USCIB also invested some energy in damage control after NGO campaigning in the US had stirred up some serious public doubts about the MAI. In December 1997, the USCIB published a letter in the *Washington Times*,<sup>83</sup> trying to calm fears about the MAI. The letter mocks the concerns of MAI critics, sarcastically asking: "Will the MAI allow big, bad multinational corporations to trample the rights of poor countries, undermine existing national environmental legislation and take away from US states their constitutional rights? Let's look at the facts..."—and referring to "the feverish atmosphere of Internet chat rooms".<sup>84</sup> The bottom line, the groups argues, is that investment is not bad for the environment, and that it will benefit "the United States in general...making the economic pie grow both here and abroad".<sup>85</sup>

#### **BUSINESS COUNCIL ON NATIONAL ISSUES**

Founded in 1976 by the CEOs of US-based Imperial Oil and Noranda, the Business Council on National Issues (BCNI) is Canada's version of the European and US business round-tables. Among its 30 members are the CEOs of several large banks and major Canadian and foreign companies, including Air Canada, AT&T, Bechtel, Bombardier, Canadian Pacific, Cargill, DuPont, General Motors, Hewlett-Packard, Loram, MacMillan Bloedel, Mitsubishi, Monsanto, Nestlé, Northern Telecom, Petro Canada and Placer Dome.

Over the past two decades, the BCNI's relationship with successive Canadian governments has become increasingly intimate. The lobby group worked strenuously for the passage of the 1988 Canada-US Free Trade Agreement<sup>86</sup> and organised a costly campaign to secure the election of the current neoliberal government.

However, the BCNI's approach to the MAI has been less aggressive, perhaps due to the group's wish to sweeten its negative public image. At the November 1997 MAI hearings, the BCNI professed its strong support for the Paris negotiations, focusing on the people-pleasing, job-creation aspects that such a treaty would bring: "...recent studies have indicated that for each billion dollars invested over a five-year period in Canada, something in the order of 45,000 jobs are created."<sup>87</sup>

BCNI companies have also used other forums to fight for their favourite provisions in the MAI. Lobbying has been conducted through the Canadian Chamber of Commerce and the Canadian Council for International Business, and the BCNI is also a member of the OECD's official business advisory council, BIAC. In particular, the BCNI is strongly opposed to the EU's general exception for regional economic integration agreements (which

would permit EU member states to discriminate against non-members), and, in solidarity with the USCIB, was quite disappointed at the recent rejection by US Congress of 'fast track' negotiating privileges for the President.<sup>88</sup>

#### **KEIDANREN**

Keidanren, the most representative Japanese business coalition with over 1,000 members (including Toyota, Mitsubishi, Nissan, Sony, Sakura Bank and Nippon Steel Corporation), has also been actively pushing for the MAI. As Japan and South Korea are the only Asian OECD members, Keidanren's main goal is to sign as many developing countries as possible onto the MAI. Thus, while urging that the MAI remain a high-standard agreement, it recommends flexibility to facilitate the membership of non-OECD countries.

In addition, Keidanren has joined forces with UNICE to encourage the creation of a multilateral framework on investment at the WTO,<sup>89</sup> and simultaneously urges investment liberalisation through bilateral and regional agreements such as APEC.

Although generally pleased with MAI developments, Keidanren is disappointed that two of its main objectives—taxation and key personnel (which allows special privileges for corporate staff)—have been carved out of the agreement.

The Japanese lobby group is also trying to reduce general

exemptions to the bare minimum—for instance, strongly opposing regional economic integration organisation (REIO) clauses (such as the one proposed for EU members), and rejecting extraterritoriality (such as the US Helms-Burton Act that punishes corporations active in Cuba), yet preferring that all sub-national levels of governments be fully bound by the MAI.

Though less aggressively than its US partners, Keidanren worries that additional labour and environmental regulations would prevent non-OECD

members from signing on to the MAI.<sup>90</sup>

#### **WORLD BUSINESS COUNCIL FOR SUSTAINABLE DEVELOPMENT**

The World Business Council for Sustainable Development (WBCSD) has only recently stepped up its involvement in the MAI. Masquerading behind its carefully cultivated image as a 'green' industry lobby group,<sup>91</sup> the WBCSD has been tremendously successful in promoting global market liberalisation and self-regulation by business instead of government intervention as the recipe for sustainable development. The WBCSD approach has left its mark on, for instance, the 1992 Rio Declaration and the climate treaty which emerged from Kyoto in December 1997. It is not surprising that the WBCSD has come out strongly in favour of the MAI, despite acknowledging potential problems.

The 15 January 1998 BIAC consultation was the first time that the Business Council's Secretariat had participated in official consultations on the MAI. In general, the group's involvement has been on the informal level. WBCSD president Björn Stigson has attended various BIAC meetings and is a member of its environment committee. Several WBCSD member companies are represented in BIAC, and the secretariats of both organisations interact

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and share relevant information.<sup>92</sup>

Stigson wrote to OECD official Don Johnston, expressing his concern about the inclusion of binding language on environmental standards in the MAI, and, in the same letter, he generally promotes the WBCSD's gospel of business self-regulation.<sup>93</sup>

Quoting Agenda 21,<sup>94</sup> Stigson argues that "trade liberalisation is a positive force for supporting the most environmentally and economically efficient use of goods and resources, and hence for contributing to sustainable development".

He then concludes that "investment liberalisation is a close relative of trade liberalisation, and can be expected to produce a similar positive impact". He expects that the greatest benefits will arise from the inclusion of Third World countries in the MAI.

Stigson acknowledges possible conflicts between new environmental regulation and the MAI, and suggests these could be solved by "making explicit the types of assurances that business and many negotiators say is already in the agreement, while

maintaining the very important goals of the MAI". He suggests that the reference to NAFTA Section 114.1 in the MAI draft already "ensures all stakeholders a balanced implementation of the agreement in dispute resolution processes". This, however, is hardly reassuring. This very clause did not prevent the US Ethyl Corporation from challenging a Canadian environmental law as an expropriation in a NAFTA court last year.

In his letter, Stigson expresses strong reservations about a provision under which countries would obligate themselves not to reduce their environmental standards in order to attract or maintain investments, be it non-binding or mandatory. He does not altogether reject mandatory provisions, provided these can really be enforced and will bring clear benefits. Stigson also recognises that the MAI could encourage companies to shift investment to pollution havens.

Rather than including environmental standards for investments in the MAI, he suggests the WBCSD 'solution' of "sound environmental management systems as an alternative to command and control environmental standard setting".

### Endnotes

46. Chakravarthi Raghavan, *Third World Network Features*, 1404/96, p. 1.
47. Chakravarthi Raghavan, *Third World Network Features*, 1527/96.
48. The eight countries were Egypt, Ghana, Haiti, India, Indonesia, Malaysia, Tanzania and Uganda. The position of the eight countries was later echoed by the 11 trade ministers of the Southern African Development Community (SADC). Source: Martin Khor, *Third World Network Features*, 546/96, p. 5.
49. *Idem*, p. 4.
50. *Idem*.
51. "The Outcome of Singapore: Statement by Sir Leon Brittan, Vice-President of the EU Commission", IP/96/1172, 13 December 1996.
52. Martin Khor, *Third World Network Features*, 1547/96, p. 4.
53. Interview with Mr Koulen, WTO Division for Intellectual Property Rights and Investment, 30 January 1998.
54. Report (1997) to the General Council.
55. "Investment Liberalisation: A New Issue for the WTO", Address by the Right Honourable Sir Leon Brittan, Vice-President of the European Commission, Cologne, 11 June 1996.
56. "World business urges global investment pact", ICC statement from 11 November 1996. The World Investment Forum took place on 10 October 1996 in Geneva, Switzerland.
57. *The Nation*, 24 December 1997.
58. The Chambers of Commerce are organised in the International Bureau of Chambers of Commerce (IBCC).
59. Interview on 29 January 1998 with Vincent J. O'Brien, Deputy Director of Communications, ICC.
60. ICC, "The World Business Organization in

1997", p. 4.

61. ICC Commission on International Trade and Investment Policy, Document no. 103/179 Rev., 30 April 1996.

62. Ibid, p. 3.

63. The ERT is a think-tank, research and lobby group representing some 47 of the largest European transnational corporations in Europe. For more information see CEO report, "Europe, Inc."

64. ERT, "European Industry and the Developing World – For a Global Framework of Mutual Interest and Trust", June 1997, p. 9.

65. ERT, "European Industry: A Partner for the Developing World. Foreign Direct Investment as a Tool for Economic Development and Cooperation: Suggestions for Future Improvement", 1993, p. 35.

66. ERT, "Investment in the Developing World: New Openings and Challenges for European Industry", December 1996, p. 13.

67. ERT, "Survey on Improvements in Conditions for Investment in the Developing World", 1993.

68. ERT, "Investment in the Developing World: New Openings and Challenges for European Industry", December 1996, p. 13.

69. Peer review is a traditional system at the OECD in which countries are encouraged to reach common positions in a committee rather than through a dispute settlement procedure. Source of this section: ERT, "European Industry and the Developing World – For a Global Framework of Mutual Interest and Trust", June 1997, p. 9.

70. Idem; foreword by Helmut Maucher.

71. Idem, p. 5.

72. UNCTAD press release, 8 December 1997.

73. Phone conversation with UNICE, January 1998.

74. Joint statements from UNICE and Keidanren, 23 November 1995 and 13 December 1996.

75. Source: USCIB website,

<http://www.imex.com/uscib/>

76. Honeywell and General Electric were the first two companies investigated under NAFTA's side agreement for labour violations in their Mexican *maquilladoras*. Source: "USCIB's Corporate Crime Blotter, or Levelling the Playing Field for Felons", Michelle Sforza, Preamble Collaborative, draft, January 1998.

77. USCIB website.

78. USCIB press release, 24 May 1995.

79. Idem.

80. Idem.

81. USCIB's President Abraham Katz, letter to US Trade Representative Charlene Barshefsky.

82. "USCIB Concerns with Environmental Provisions for the MAI", USCIB President Abraham Katz's letter to US Deputy Trade Representative Jeffrey Lang, 11 July 1997.

83. The *Washington Times* is well known for the sympathetic representation of business interests in its pages. Fred Singer, leader of the Science and Environment Project, an industry lobby which organised an aggressive misinformation campaign against climate change prevention, is on the newspaper's council.

84. Timothy E. Deal, Senior Vice President, USCIB, "Why We Need the Multilateral Agreement on Investment", *Washington Times*, 25 December 1997.

85. Idem.

86. The FTA was the basis for the NAFTA treaty.

87. Stuart Carre, BCNI, in front of the Subcommittee on International Trade, Trade Disputes and Investment of the Standing Committee on Foreign Affairs and International Trade, 25

November 1997.

88. Idem. "This has cast a pall of uncertainty over the ability of US negotiators to deliver on any negotiated trade and investment agreements, and that includes the MAI."

89. Statement by Keidanren and UNICE at the WTO Ministerial Conference, Singapore, 13 December 1996.

90. Keidanren's "Views on MAI Negotiations", 17 June 1997.

91. The WBCSD has many renowned corporate polluters as members, including British Petroleum, Cargill, Fiat, General Motors, ICI, Lafarge, Monsanto, Nestlé, Philips, Procter & Gamble, Rio Tinto Zinc, Son, Statoil, Texaco, Toyota, Unilever, Volvo, Waste Management International, Western Mining Corporation and Weyerhaeuser.

92. E-mail from Marcel Engel, WBCSD, 29 January 1998.

93. Letter dated 9 January 1998.

94. Agenda 21 is the action plan which came out of the 1992 Rio Earth Summit.

### About the Author:

This briefing was prepared by Belen Balanya, Ann Doherty, Olivier Hoedeman, Adam Ma'anit and Erik Wesselius for Corporate Europe Observatory (CEO), an Amsterdam-based non-profit organisation set up to monitor and report on the political activities of European corporations and their lobby groups. CEO encourages readers to spread this briefing or use the information contained in it, but would appreciate receiving a copy of any published article citing it. Interested parties who would like to be on CEO's e-mail distribution list should e-mail their details direct to Corporate Europe Observatory.